

## Echoes In The 21<sup>st</sup> Century: Passion And Praxis For Lawyering And Justice

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December 20, 2014 marks the second anniversary of the adoption by the United Nations General Assembly of the resolution titled United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.<sup>2</sup> The UN Principles and Guidelines highlights the international community's effort to arm state actors with a broad framework to provide legal aid, particularly to those denied of access to justice by virtue of poverty.<sup>3</sup> It is not sufficient to establish systems of justice and redress; these systems should render themselves accessible, especially to the most vulnerable and oppressed. In the same vein, the UN Principles and Guidelines trumpets the quintessential cause for justice and human rights of our legal profession, and along with it, our age-old tradition of rendering pro bono legal aid. *Fiat justitia ruat caelum* ("Let justice be done though the heavens may fall").

### PRO BONO LEGAL AID AND SOCIAL MOVEMENTS

But as history shows, our profession's pro bono legal tradition, by sheer force of necessity, has continually gone beyond its own narrow boundaries. Social movements spark dramatic changes in the legal landscape. Conversely, strategic legal developments, like the birth of the Civil Rights Act<sup>4</sup> in the U.S. in 1964, change the sociopolitical landscape of societies. Both illustrate the norm-setting power of the law.

Lawyer "prisoners of conscience" – who had gone through the ordeal of political repression and imprisonment – have played significant roles in history: Cuba's Fidel Castro, the Philippines' Apolinario Mabini and Jose "Ka Pepe" Diokno, India's Mohandas Gandhi, and South Africa's Nelson Mandela, to name a few. In the world today, we see, and need more than ever, genuine and sincere pro bono human rights lawyers in the thick of history- and justice-making.

## DUE PROCESS OF LAW

A lesson can be gleaned from the barons' efforts to establish the Magna Carta Libertatum<sup>5</sup> as a counterforce to King John's unlimited powers in England in 1215. This lesson is that the time-honored principle of due process of law<sup>6</sup> is not just a sterile and lifeless notion embodied in this historic document. But rather, the Magna Carta's principle of due process of law,<sup>7</sup> progenitor of the Fifth Amendment<sup>8</sup> to the U.S. Constitution and the bedrock principle of people's democratic principles, ideals, rights and freedoms, constitutes a living force that needs to be fought for, if we as well as the clients we serve, individually or collectively, were to attain justice and human rights.

Today, in our interlinked and fast-paced world, we witness specters of injustice and inhumanity everywhere in their myriad hues and forms, involving not only humans, but the very planet and environment we live in and depend on for our very own existence and survival. Members of the Bench and the Bar, wielding the law as their shield and weapon, in solidarity, and in action with the people, play a crucial role in fighting against the injustice engendered and swept under the rug with the supersonic speed and power of the juggernaut that is globalization, aided by various forms of Internet and Communication Technology. Pushed to the margins of social existence, those voiceless people are denied access to justice by the powers-that-be, be they governmental, military, corporate, or other state and non-state actors.

### “WORKING FROM THE EARTH UP” – LEGAL AID CENTRE OF ELDORET (LACE) IN KENYA

We do not have to look far and wide for members of the Bench and the Bar with such a keen sensitivity to injustice. In her keynote speech on April 9, 2013, on the occasion of the 10<sup>th</sup> anniversary of Indiana University Robert H. McKinney School of Law's (IU McKinney's) Master of Laws (LL.M.) program, Honorable Patricia Riley,<sup>9</sup> of the Indiana Court of Appeals, gave a moving narrative that underscores the fundamental paradigm as to how lawyers should approach developmental legal challenges and issues both nationally and internationally. Inspired by the work of the Academic Model Providing Access to Healthcare (AMPATH)<sup>10</sup> during her first visit to the IU-Kenya program in Eldoret in 2007, Judge Riley asked “What can lawyers do?”<sup>11</sup>

She pondered: “How about working from the earth up? How can we start meeting those people face to face and saying, ‘These are things we can help you do, but you must tell us what it is you want us to help you with?’”

The rest is history. Judge Riley’s questions led to the formation of the Legal Aid Centre of Eldoret (LACE) in Kenya in 2008. This “free legal aid clinic,” according to Judge Riley, was Kenyan lawyer Eric Gumbo’s shared vision with his fellow Kenyan attorneys. Professor Fran Quigley<sup>12</sup> – who eventually founded IU McKinney Law’s Health and Human Rights Clinic – joined Judge Riley in co-founding LACE, along with Eric Gumbo, Vincent Mutai and others from the Moi University School of Law. With the seed funds provided by the Reuben Family Foundation and Indianapolis Rotary Club as well as AMPATH’s full support, their LACE efforts eventually evolved into a broader partnership between and among IU McKinney Law,<sup>13</sup> the Indiana legal community, Moi University School of Law, and AMPATH. “These kinds of partnerships... builds the formation and reconceptualizes the practice of law and the nature of law and how is it that we’re going to introduce that between countries. And that has led to a wonderful partnership,” she remarked.

On December 18, 2012, at Eric’s and Milkah Murugi’s<sup>14</sup> instance, Professor Quigley, working with Judge Riley, created the LACE support group at IU McKinney Law, comprised of volunteer lawyers and students, in order to assist LACE with its child custody and prisoners’ thrusts and projects. Professor Quigley’s initiative came in the heels of Milkah’s and Eric’s visit to Indiana and IU McKinney Law in October 2012.

“Just do it. Just do it,” Judge Riley implored her audience, citing their collective success in reaching out to the HIV/AIDS-affected clientele and beneficiaries of LACE. “It was just that there was a need and we had some way to assist them in filling this need and that’s how it happened,” she narrated.

*Res ipsa loquitur.* Judge Riley’s central leadership and nurturing role in the creation and sustenance of LACE demonstrates the pioneering role of women lawyers and judges in humanity’s unifying and common quest for greater dignity, human rights, and freedom, especially for those most deprived of these most fundamental human rights.

Verily, Judge Riley’s “How can we help?” rather than the self-seeking “What’s in store for me?” paradigm accentuates our legal profession’s spiritual, ethical, moral, educative, social, political and legal aspirations and moorings.

### EMPHASIZING THE CONCEPT OF JUSTICE

Along with her “How lawyers can help in a direct manner?” approach, as an integral part of her quest for “a valuable and effective action,” as articulated in her speech, Judge Riley likewise reflected upon and advocated for the legal profession’s “renewed emphasis... on the concept of justice” in light of the socioeconomic, technological, and legal challenges confronting the world and the legal profession today. She then expounded on her view of what “reconceptualization of our legal profession in terms of the primary commitment to justice” should mean. “Central to any new order that can shape and direct technology,” Judge Riley said, “will be a renewed emphasis, in my opinion, on the concept of justice.”

“It will depend on the practice of justice and on the enforcements of limits to that power and how we are going to enforce those concepts of justice.”

“To what extent can legal education resist the demands of the market which have so captured the ethos of legal practice? And to what extent can legal education have influence to challenge dominant corporate ideologies?” Judge Riley asked. Hers are a question and a striving for relevancy, proactivity, and responsiveness of both legal education and the legal profession to these issues, within and beyond American shores. “I am convinced that we are moving at a below ground with our LL.M. program.... We are the ones who are preparing the soil to plant the seeds and preparing those students to challenge the mainstream, which constantly needs... reconceptualizing,” Judge Riley said.

### LAWYER’S SWORD AND ARMOR

U.S. jurisprudence, such as the landmark *Brown v. Board of Education*<sup>15</sup> junking the separate-but-equal mythology that decisively ended racial segregation in the public educational sphere and *Roper v. Simmons*<sup>16</sup> outlawing juvenile executions in 2005, show how lawyers can wage strategic court battles to hold governments, and even non-state actors such as corporations and mercenaries, accountable for their obligation to respect, protect and fulfill human rights, not only in the U.S. but other parts of the world as well.

Our struggle continues.

### COMMUNITY LAWYERING—GHANA

In Ghana, community lawyering has been thriving, thanks to grassroots human rights lawyers working with and among

communities of the poor who lack access to justice. Again, we need not look far and wide for examples of such lawyers. IU can pride itself for having alumni of such caliber, namely Rowland Atta-Kesson<sup>17</sup> and Edward Tuinese Amuzu.<sup>18</sup> In 2008, Rowland discussed at IU McKinney Law the philosophy, methodologies, and thrusts of community lawyering of the Legal Resources Centre, Ghana,<sup>19</sup> of which he and Edward were a part.

#### PUBLIC INTEREST LITIGATION—INDIA

In their own time, Justice V.R. Krishna Iyer and Chief Justice P.N. Bhagwati of the Indian Supreme Court fought for the cause of the common people by either *motu proprio* taking judicial action or cognizance of cases, even in the absence of formal pleadings and/or *locus standi*, in their narrow, technical meaning. In the 1970s, their judicial activism gave birth to the phenomenon of public interest litigation (PIL)<sup>20</sup> or social action litigation (SAL) that addressed myriad social ills plaguing India.

In a conference in Bangkok organized by the Asian Human Rights Commission and Asian Legal Resource Centre in 1997, Justice Krishna Iyer declared in a booming voice: “The most important qualification of a justice of the court is the capacity to weep in the face of injustice.”

Justice Krishna Iyer personally narrated how he, Chief Justice Bhagwati and the Indian Supreme Court acted upon a plea to investigate the screams of a prisoner one night. The plea came in the form of a handwritten “petition” scribbled by another prisoner on a cigarette pack paper that was smuggled out from prison by a visitor. The plea ended up in Justice Krishna Iyer’s hands, who then recalled its words as something to this effect: “This night I heard a prisoner scream. Please look into this.” Pursuant to its epistolary jurisdiction,<sup>21</sup> the Indian Supreme Court treated the note as a writ petition and ordered a prompt investigation. It turned out that the prisoner had been screaming since he was then being tortured by the prison warden. Justice Krishna Iyer described how the prisoner was tortured; but it’s unprintable. The warden was sacked.

Explaining the constitutional basis for India’s liberal doctrine of *locus standi* and public interest litigation, Indian Supreme Court Chief Justice K.G. Balakrishnan said:

For purposes of constitutional competence, these actions are characterized as those coming under the writ jurisdiction of the Supreme Court of India under Article 32 of our Constitution and the various High Courts, under Article 226. The traditional extent of writ jurisdiction was of course a colonial inheritance from the

British-era and the remedies that could be invoked were those of habeas corpus, quo warranto, mandamus, prohibition and certiorari. However, the Indian Courts have pushed the boundaries of constitutional remedies by evolving the concept of a ‘continuing mandamus’ which involves the passing of regular directions and the monitoring of their implementation by executive agencies. In addition to designing remedies for ensuring that their orders are complied with, the Courts have also resorted to private law remedies such as injunctions and ‘stay’ orders in Public Interest Litigation (PIL) matters. The Supreme Court of India has been able to shape appropriate remedies for a variety of situations on account of the wide discretionary powers for granting constitutional remedies that have been conferred on it as per the language of Article 32 of the Constitution.<sup>22</sup>

Chief Justice Bhagwati penned PIL decisions<sup>23</sup> pertaining to “the rights of bonded labourers,”<sup>24</sup> “child labourers,”<sup>25</sup> “trafficking, treatment of children in observation homes,”<sup>26</sup> and “working conditions in stone quarries and environmental pollution.”<sup>27</sup> Chief Justice Bhagwati eventually became an independent expert of the UN Human Rights Committee, the treaty-based body tasked to independently monitor and oversee the implementation by state parties of the International Covenant on Civil and Political Rights. Chief Justice Bhagwati espoused the training of judges and the provision of legal aid to the poor in exercising the committee’s oversight role vis-à-vis state parties. He was recognized by Chief Justice K.G. Balakrishnan as “the pioneer behind the judicial colloquia which evolved the ‘Bangalore Principles for the domestic application of International Human rights norms’ in 1988.”<sup>28</sup>

#### “REVOLUTION THROUGH LAW”

From the womb of martial law in the Philippines, former Senator Jose “Ka Pepe” Diokno’s “revolution through law” was born. Right after his release in 1974 from his two-year incarceration, most of which in “bartolina” or solitary confinement, by dictator Ferdinand Marcos, Ka Pepe formed the non-governmental organization Free Legal Assistance Group (FLAG). His conscience stung by his own experience of prolonged detention without charges or trial, notwithstanding that he was a senator and former secretary of justice of the republic, Ka Pepe unflinchingly took up the cudgels for the poor and the oppressed, employing his legal acumen.

FLAG’s clients included farmers, workers, indigenous people, slum dwellers, students, activists and political detainees who

endearingly called him Ka Pepe (meaning Comrade Pepe). Ka Pepe fearlessly handled their cases pro bono. In addition to his courtroom battles, Ka Pepe developed what he coined as “metalegal tactics” as a form of creative and collective struggle in asserting the people’s economic, social, cultural, civil, and political rights in all fronts and arenas of struggle, including the parliament of the streets. Even in the thick of martial law, Ka Pepe personally trained students and other individuals on grassroots human rights and paralegal work—giving rise to paralegal initiatives like forming quick reaction teams (QRTs) and “barefoot lawyers”<sup>29</sup>—a legacy that continues to be espoused and practiced today in the Philippines and various parts of the globe to promote human rights as well as legal and people empowerment. Ka Pepe’s exposition on the role and functions of “community paralegals” bears significance to the goals, nature, functions, and thrusts of law school clinics in various parts of the world today. He explains:

To overcome the manpower problem, developmental legal aid groups have:

Trained paralegals or ‘barefoot lawyers’ in the basic concepts of law, legal procedure, tactics and counter tactics, and in the skills needed to do routine, repetitive, or preliminary jobs and carry out simple investigations, such as interviewing witnesses, and taking down their statements, getting copies of public records, preserving physical evidence, filling out standard government forms, etc. Paralegals are chosen from among promising students of law and social sciences who agree to do field work with poor communities between school terms; representatives of depressed communities who are recommended by civic organizations working with them; and trade union members recommended by their unions. Paralegal training has produced several benefits.

Lawyers have had more time to devote to the creative aspects of their job: counseling, negotiating, drafting, advocacy. Some law students were motivated by their experience as paralegals to join legal aid groups after the bar. And paralegals have equipped the communities they live with a knowledge of how law works and how they use law to assert or defend their rights.<sup>30</sup>

#### DEVELOPMENTAL LEGAL ADVOCACY—PHILIPPINES

The Philippine experience of human rights struggle demonstrates and confirms the indivisibility and interdependence of civil, political, economic, social and cultural rights. We cannot enjoy one right without the others. Characterizing traditional legal aid (TLA), in and by itself, as a mere form of charity or of giving alms to the poor—a “band-aid” solution that merely alleviates the symptoms,

but not cure the very root causes of ailments—Ka Pepe conceived and developed, as TLA’s “supplement,” the sociopolitical and legal philosophy of developmental legal aid (DLA). Later on changed to developmental legal advocacy, DLA guided lawyers in fighting hand in hand with the people who stand in the forefront of their struggle for their own holistic development.<sup>31</sup> Ka Pepe himself explained:

Traditional legal aid is in fact the lawyer’s way of giving alms to the poor. Like alms which provide temporary relief to the poor but do not touch the social structures that keep the poor poor, traditional legal aid redresses particular instances of injustice, but does not fundamentally change the structures that generate and sustain injustice...

So development requires a different type of legal aid, one that will not supplant traditional legal aid but supplement it, concentrating on public rather than on private issues, intent on changing instead of merely upholding existing law and social structures, particularly the distribution of power within society...

This new type of legal aid is needed because development is more than just feeding, clothing, curing, teaching and housing people. Many prisons do as much. Development is above all the people deciding what food, clothes, medical care, education, and housing they need, and how to provide them...

In ASEAN countries and, indeed, in all developing countries, then a new type of legal aid would rest on firm legal ground: the right of the people to development. Efforts to practice this new type of legal aid which for want of a better name I shall call developmental legal aid, have begun in ASEAN countries. Lawyers who had been imprisoned, or had practiced traditional legal aid became convinced that, under conditions in their country, something more was needed. If the rights of the poor and the oppressed were to be vindicated and just and human development achieved, the job of developmental legal aid had to be done.<sup>32</sup>

Ka Pepe’s legacy of DLA marks a radical departure from the paternalistic and charity-oriented nature of traditional legal aid that helps perpetuate the status quo. What distinguishes Ka Pepe’s “revolution through law” is its thrust to go into and attack the structural roots of injustice by combining law with metalegal remedies. In no time, DLA transformed into a national movement of human rights lawyers and gained traction in other countries as well.



### ACCESS TO JUSTICE

Their common quest for access to justice of those unjustly denied their own birthright, as well as fundamental right to due process of law, binds these conscientious men and women of the law together. They lived and breathed the dictum, “No master but law, no guide but conscience, no aim but justice,” as immortalized by Philippine Supreme Court Associate Justice Jose Benedicto Luna (J.B.L.) Reyes.

The spirit of selflessness and fire of commitment to the cause of justice and human rights animate these sincere legal eagles, who daringly walk the talk, and soar toward ever greater and newer heights of struggle for freedom, for humans to realize all their potentials to the fullest extent possible. *Gratis et amore*. Their work and efforts are largely unreported, for they would rather proceed to start working on yet another justice project rather than publicly extol their own virtuous deeds for self-aggrandizement.

### CAUSE OF HUMAN RIGHTS

“No cause is more worthy than the cause of human rights,” Ka Pepe wrote. “Human rights are more than legal concepts: they are the essence of man. They are what make man human. That is why they are called human rights: deny them and you deny man’s humanity.”<sup>33</sup>

True to our calling as lawyers, we emulate and take inspiration from them. As they teach by example, lawyering is not a mere job or source of livelihood. It is our vocation. Our “priesthood of Justice.”<sup>34</sup>

### About the Author

Perfecto “Boyett” Caparas serves as Indiana University Robert H. McKinney School of Law’s graduate studies and international affairs program manager. He directs the law school’s Pro Bono United Nations Human Rights Reporting Program. The foregoing is for descriptive purposes only. The author does not in any way represent IU, McKinney Law and/or any of their officers and personnel. The views expressed in this article exclusively belong to the author and do not represent that of any organization’s or of anyone else’s.

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<sup>1</sup> The author dedicates this humble work to Justice V.R. Krishna Iyer, a true icon of humanity’s struggle for human rights, dignity and freedom. *Infra*. Justice Krishna passed away on December 4, 2014, days after celebrating his 100<sup>th</sup> birthday.

<sup>2</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, [http://www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf) and <http://docbox.un.org/DocBox/docbox.nsf/GetFile?OpenAgent&DS=E/RES/2012/15&Lang=E&Type=DOC>

<sup>3</sup> United Nations Office on Drugs and Crime, Early access to legal aid in criminal justice processes: a handbook for policymakers and practitioners, p. 2, para. 3, p. 3, para. 1-2; Chapter II. Benefits and challenges relating to early access to legal aid, p. 9, para. 1, Criminal Justice Handbook Series, United Nations, February 2014, [www.unodc.org/documents/justice.../eBook-early\\_access\\_to\\_legal\\_aid.pdf](http://www.unodc.org/documents/justice.../eBook-early_access_to_legal_aid.pdf)

<sup>4</sup> Civil Rights Act of 1964, January 7, 1964, <http://media.nara.gov/rediscovery/02233.pdf>

<sup>5</sup> See Magna Carta, 1215, British Library, <http://www.bl.uk/collection-items/magna-carta-1215> and its English translation from the Latin original <http://www.bl.uk/magna-carta/articles/magna-carta-english-translation>

<sup>6</sup> Chapter 39 of the Magna Carta provides: “+ (39) No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.”; <http://www.bl.uk/magna-carta/articles/magna-carta-english-translation#sthash.xmkLJSod.dpuf>

N.B.: “Clauses marked (+) are still valid under the charter of 1225, but with a few minor amendments.” Quoted from <http://www.bl.uk/magna-carta/articles/magna-carta-english-translation#sthash.xmkLJSod.Ro79cIXF.dpuf>

<sup>7</sup> For a deeper explanation on the history and essence of the principle of due process of law, see excerpt below from Constitution of the United States of America: Analysis, and Interpretation - Centennial Edition – Interim, Congressional Committee Materials, Additional Government Publications, Congressional Documents, Constitution of the United States of America: Analysis and Interpretation, Y 1.1/3: July 1, 2014, Congress, 112th Congress, 2nd Session, Doc. 112-9 - Fifth Amendment - Rights of Persons, p. 1541, <http://www.gpo.gov/fdsys/pkg/GPO-CONAN-REV-2014/pdf/GPO-CONAN-REV-2014-10-6.pdf>, viz:

It is now the settled doctrine of this Court that the Due Process Clause embodies a system of rights based on moral principles so deeply imbedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our whole history. Due Process is that which comports with the deepest notions of what is fair and right and just. [1] The content of due process is “a historical product” [2] that traces all the way back to chapter 39 of Magna Carta, in which King John promised that “[n]o free man shall be taken or imprisoned or disseized or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land. [3]

In turn, the abovementioned quotation was based on the following sources cited in footnotes 1-3 of this document:

Fn. 1 *Sollesbee v. Balkcom*, 339 U.S. 9, 16 (1950) (Justice Frankfurter dissenting). Due process is violated if a practice or rule “offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.” *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

Fn. 2 *Jackman v. Rosenbaum Co.*, 260 U.S. 22, 31 (1922).

Fn. 3 Text and commentary on this chapter may be found in W. MCKECHNIE, *MAGNA CARTA—A COMMENTARY ON THE GREAT CHARTER OF KING JOHN* 375–95 (Glasgow, 2d rev. ed. 1914). The chapter became chapter 29 in the Third Reissue of Henry III in 1225. *Id.* at 504, and see 139–59. As expanded, it read:

No free man shall be taken or imprisoned or deprived of his freehold or his liberties or free customs, or outlawed or exiled, or in any manner destroyed, nor shall we come upon him or send against him, except by a legal judgment of his peers or by the law of the land.

See also J. HOLT, *MAGNA CARTA* 226–29 (Cambridge: 1965). The 1225 reissue also added to chapter 29 the language of chapter 40 of the original text: “To no one will we sell, to no one will we deny or delay right or justice.” This 1225 reissue became the standard text thereafter.

<sup>8</sup> The Fifth Amendment to the US Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<sup>9</sup> Juris Doctor, Indiana University Robert H. McKinney School of Law, 1974; <http://www.in.gov/judiciary/appeals/2450.htm>

<sup>10</sup> <http://www.ampathkenya.org/>

<sup>11</sup> To watch Judge Patricia Riley deliver her keynote speech, see LL.M. 10th Anniversary & LL.M. Alumni Homecoming: International Legal Education in the 21st Century: Preparing Lawyers to Meet Global Challenges Part 1, <http://podcast.iu.edu/Portal/PodcastPage.aspx?podid=337e2e7c-eb95-4424-bf6f-8e7f4aec7960> and <http://podcast.iu.edu/upload/Law/337e2e7c-eb95-4424-bf6f-8e7f4aec7960/Prt1Keynote.mov>

<sup>12</sup> Juris Doctor, IU McKinney, 1987; IU Alumni for Human Rights co-founder and long-time human rights lawyer; <http://mckinneylaw.iu.edu/faculty-staff/profile.cfm?Id=440>

<sup>13</sup> In one of his very first acts as the new dean of Indiana University Robert H. McKinney School of Law starting in the summer of 2013, Dean Andrew Klein [<http://mckinneylaw.iu.edu/faculty-staff/profile.cfm?Id=18>] provided Milkah Murugi, legal director of the Legal Aid Centre of Eldoret (LACE) in Kenya, with a full scholarship for her Master of Laws (LL.M.) studies at IU McKinney Law during academic year 2013-2014. This marked the second time that IU McKinney Law granted a full LL.M. scholarship for the benefit of LACE.

During her return trip to Eldoret, Kenya in 2009, Judge Riley, along with Indianapolis lawyers and then IU McKinney Law Dean Gary Roberts [<http://mckinneylaw.iu.edu/faculty-staff/profile.cfm?Id=313>], met with the Dean of Moi University School of Law. Witnessing firsthand how LACE served the legal needs of persons affected by HIV/AIDS, Dean Roberts committed to provide a full LL.M. scholarship for the benefit of LACE. Avril Rua, who was then volunteering for LACE while attending the Moi University School of Law, served as IU McKinney Law's first LL.M. scholar. Avril earned her LL.M. International Human Rights Law degree from IU McKinney Law in 2011.

Dean Klein's action strongly demonstrated IU McKinney Law's firm institutional commitment to pursue its primary mission of educating lawyers and serving the community at large, specifically by enabling the poor's access to justice through LACE. Dean Klein's action further built upon Moi University School of Law's and IU McKinney Law's institutional partnership, primarily benefiting persons afflicted with HIV/AIDS. Indirectly, thus, through its LL.M. scholarship for LACE human rights defenders who handle the HIV/AIDS-related legal problems of the masses, IU McKinney Law demonstrated its institutional commitment to justice for the marginalized and the poor.

IU McKinney Law's example illustrates how law schools can be relevant to the lives and struggles of the poor, specifically their quest for access to justice.

<sup>14</sup> Legal Director, Legal Aid Centre Eldoret (LACE), Kenya

<sup>15</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954). In this case, the US Federal Supreme Court overturned *Plessy v. Ferguson*, 163 U.S. 537, and the so-called "separate but equal" doctrine because of the inherent inequality of segregated educational facilities. Segregation in public education violated the equal protection of the laws under the Fourteenth Amendment to the US Constitution. The US Fourteenth Amendment provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

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States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

<sup>16</sup> *Roper v. Simmons*, 163 U.S. 537 (2005). In this case, the US Federal Supreme Court outlawed juvenile executions on the basis of the Eight Amendment to the US Constitution, which prohibits cruel and unusual punishments. The Eight Amendment reads: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

<sup>17</sup> Master of Laws (LL.M.) International and Comparative Law, IU McKinney, 2009

<sup>18</sup> LL.M. International Human Rights Law, IU McKinney, 2006; IU Alumni for Human Rights co-founder

<sup>19</sup> <http://www.lrcghana.org/>

<sup>20</sup> For more information about public interest litigation, see *Judicial Activism Under The Indian Constitution*, Address by Honorable Mr. K.G. Balakrishnan, Chief Justice of India, Trinity College Dublin, Ireland, October 14, 2009, [http://www.sci.nic.in/speeches/speeches\\_2009/judicial\\_activism\\_tcd\\_dublin\\_14-10-09.pdf](http://www.sci.nic.in/speeches/speeches_2009/judicial_activism_tcd_dublin_14-10-09.pdf)

<sup>21</sup> The Constitution of India, Part III.—Fundamental Rights.—Right to Constitutional Remedies, Article 32(2) provides: “The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.”, [http://india.gov.in/sites/upload\\_files/npi/files/coi\\_part\\_full.pdf](http://india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf)

For more information about the constitutional basis and jurisprudential philosophy underlying epistolary jurisdiction in India, see *Judicial Activism Under The Indian Constitution*, *supra*.

<sup>22</sup> Growth of Public Interest Litigation in India, Address by Justice K.G. Balakrishnan, Chief Justice of India, Singapore Academy of Law, Fifteenth Annual Lecture, October 8, 2008, [http://supremecourtfindia.nic.in/speeches/speeches\\_2008/8%5B1%5D.10.08\\_singapore\\_-\\_growth\\_of\\_public\\_interest\\_litigation.pdf](http://supremecourtfindia.nic.in/speeches/speeches_2008/8%5B1%5D.10.08_singapore_-_growth_of_public_interest_litigation.pdf)

<sup>23</sup> These constitutional law cases were cited by Indian Chief Justice K.G. Balakrishnan on the occasion of the release of Chief Justice Bhagwati’s book. See On the release of: ‘Judicial Reflections of Justice Bhagwati’, compiled by Ram Kishore Choudhury and Tapash Gan Choudhury (Kolkata: Academic Foundation & Publication Pvt. Ltd., 2008) at Vigyan Bhavan, New Delhi (September 11, 2008) (Comments by Justice K.G. Balakrishnan, Chief Justice of India), [http://www.supremecourtfindia.nic.in/speeches/speeches\\_2008/release\\_of\\_book\\_on\\_justice\\_bhagwati\\_11-9-08.pdf](http://www.supremecourtfindia.nic.in/speeches/speeches_2008/release_of_book_on_justice_bhagwati_11-9-08.pdf)

<sup>24</sup> *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161

<sup>25</sup> *People’s Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473

<sup>26</sup> *Sheela Barse v. The Secretary, Children’s Aid Society*, (1987) 3 SCC 50

<sup>27</sup> *M.C. Mehta v. Union of India*, (1986) 2 SCC 176

<sup>28</sup> Comments by Justice K.G. Balakrishnan. *Supra*

<sup>29</sup> Diokno, Jose W. 1982. “Developmental Legal Aid in Rural ASEAN: Problems and Prospects.” In “Rural Development and Human Rights in South East Asia,” 178–81. International Commission of Jurists and Consumers Association of Penang, Penang, Malaysia, cited by Jennifer Franco, Hector Soliman and Maria Roda Cisnero, Community Based Paralegalism in the Philippines: From Social Movements to Democratization, Justice and Development Working Paper Series, 27/2014, Justice Reform Practice Group, Legal Vice Presidency, The World Bank, January 1, 2014 [http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2014/03/12/000333037\\_20140312112758/Rendered/PDF/860000NWP0Comm00Box382162B00PUBLIC0.pdf](http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2014/03/12/000333037_20140312112758/Rendered/PDF/860000NWP0Comm00Box382162B00PUBLIC0.pdf) and

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<https://openknowledge.worldbank.org/bitstream/handle/10986/17825/860000NWP0Comm00Box382162B00PUBLIC0.txt?sequence=2>

See also International Human Rights Internship Program, *Ripple in Still Water – Reflections by Activists on Local- and National-Level Work on Economic, Social and Cultural Rights*, Chapter 3: Organizational Issues, Goals and Strategies, Example: FLAG and its Economic, Social and Cultural Rights Program, <http://www1.umn.edu/humanrts/edumat/IHRIP/ripple/chapter3.html>

<sup>30</sup> Id

<sup>31</sup> Id

<sup>32</sup> Id

<sup>33</sup> Diokno, Jose, *Human Rights Make Man Human, A Nation for Our Children – Human Rights, Nationalism, Sovereignty*, Selected Writings of Jose W. Diokno, p. 1, para. 1, Manalang, Priscilla S., ed, The Jose W. Diokno Foundation, Inc. and Claretian Publications, Quezon City, Philippines, 1987

<sup>34</sup> Dean John Henry Wigmore used the phrase “priesthood of Justice” in 1915, thus:

The law as a pursuit is not a trade. It is a profession. It ought to signify for its followers a mental and moral setting apart from the multitude,—a priesthood of Justice. . . . How the present attitude has come about is easy to see. . . . In a country where all men started even and each man had to earn his living,—where tradition and privilege were cast aside,— . . . the Law took its place with other livelihoods; and its gainful aspect became emphasized. And then . . . came the commercial expansion following the Civil War; and the lawyer was more and more drawn into the intimate relations as adviser of the business man.

And now, in the large cities, the commercial standards have spread to the Law, and the profession has been merged into the trade.

Nevertheless, that is all an error. That is, the inherent nature of things demands always that the Law shall be a profession.

From John H. Wigmore, Preface to Orrin N. Carter, *Ethics of The Legal Profession*, at xxi–xxii (1915), as cited in FN 11, by Morgan, Thomas D. (2011) "Calling Law a Profession Only Confuses Thinking About the Challenges Lawyers Face," *University of St. Thomas Law Journal*: Vol. 9: Iss. 2, Article 6. Available at: <http://ir.stthomas.edu/ustlj/vol9/iss2/6>

Also cited by Allison Marston, *Guiding the Profession: The 1887 Code of Ethics of the Alabama State Bar Association*, 49 Ala. L. Rev. 471, FN 5

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